Calendar No. 527

78TH CONGRESS, 1st Session } SENATE { REPORT No. 520

RELATING TO JOINT RATES OF FREIGHT FORWARDERS AND COMMON CARRIERS BY MOTOR VEHICLE

REPORT

OF THE

COMMITTEE ON INTERSTATE COMMERCE

ON

S. 1425

A BILL TO AMEND SECTION 409 OF THE INTERSTATE COMMERCE ACT, RELATING TO JOINT RATES OF FREIGHT FORWARDERS AND COMMON CARRIERS BY MOTOR VEHICLE

TOGETHER WITH THE

MINORITY VIEWS OF MR. REED

NOVEMBER 4 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

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NOVEMBER 4 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

Mr. WHEELER, from the Committee on Interstate Commerce, submitted the following

REPORT

[To accompany S. 1425]

The Committee on Interstate Commerce, to whom was referred the bill (S. 1425) to amend section 409 of the Interstate Commerce Act, relating to joint rates of freight forwarders and common carriers by motor vehicles, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment suggested by the committee is as follows:

Page 1, line 6, strike out the words, "forty-two months" and insert in lieu thereof the words, "thirty-six months".

As will appear from the letters herein set forth, this bill has the support and approval of the Interstate Commerce Commission, the Office of Defense Transportation, and the War Department.

Section 409 of the Interstate Commerce Act states, in part, that—

> In order to provide a reasonable period of adjustment within which rates and charges may be established pursuant to the provisions of section 408, nothing in this Act shall be construed to make it unlawful for freight forwarders and common carriers by motor vehicle * * * to operate under joint rates or charges during a period of eighteen months from the date of enactment of this part, but not thereafter.

The 18-month period referred to will expire on November 16, 1943. The bill as amended by the committee preserves and continues the statutory authorization contained in section 409 for an additional period of 18 months from and after November 16, 1943.

Briefly stated, because of wartime conditions and their attendant problems of abnormally heavy traffic, shortages of experienced manpower, and shortages of transportation equipment, it has not been possible for motor carriers to work out and establish the "assembling and distribution rates" contemplated at the time part IV of the

Interstate Commerce Act was enacted. If the joint rates of freight forwarders and motor carriers should be abruptly discontinued there would be a shift of tonnage to the already overburdened rail less-carload service and motor less-truckload service with a consequent increase in the present transportation congestion. Director Eastman, of the Office of Defense Transportation, informed the committee that the present capacities of the railroads and the motor carriers for various kinds of cargo are such, relatively speaking, that any decrease in the proportion of merchandise traffic now being handled by the motor carriers would be unfortunate, and that the factors which make the enactment of this bill immediately advisable will probably continue for the duration of the war.

Section 2 of the bill permits the establishment of joint rates from any origin to any destination where any individual freight forwarder rate or a joint rate is in effect. It extends the joint rate authority to freight forwarders and their connecting motor carriers who heretofore have been unable to obtain joint rates under the act. In this connection it may be pertinent to say that one of the witnesses, who had requested time in which to be heard in opposition to the bill, withdrew his objection when apprised of the purpose and effect of section 2 thereof.

The Senate Committee on Interstate Commerce held hearings on the bill for 2 days. Representatives of freight forwarders, motor carriers, railroads, shippers, manufacturers of war and civilian goods, and others appeared and expressed their views. The overwhelming weight of the testimony was in favor of the bill. Some of the witnesses favored a longer extension than 18 months, some of them favored a shorter extension than that, but practically all of them agreed that there should be some extension.

In the light of the testimony adduced at the hearings, and in view of the recommendations submitted by the Interstate Commerce Commission, by Director Eastman of the Office of Defense Transportation, and by the Secretary of War, it is clearly evident that an extension of 18 months is necessary.

A similar bill (H. R. 3366) has recently been considered by the House Committee on Interstate and Foreign Commerce. It was reported favorably by that committee (H. Rept. No. 805), and has passed the House with an amendment identical to that recommended herein. In explaining the immediate need for the enactment of this legislation, the report of House Committee on Interstate and Foreign Commerce states, in part, as follows:

> The first section of the bill amends section 409 of the Interstate Commerce Act with respect to the time during which freight forwarders and common carriers by motor vehicle may operate under joint rates. That section, as originally enacted, and as now in force, permits such joint rates during a period of 18 months, which period expires on November 16, 1943. The bill as introduced proposed to strike out "eighteen months" and insert in lieu thereof "forty-two months". As proposed to be amended, it would strike out "eighteen months" and insert in lieu thereof "thirty-six months", thus providing for an additional period of 18 months during which forwarders and common carriers by motor vehicle may operate under joint rates.
>
> It was contemplated at the time of the enactment of part IV of the Interstate Commerce Act that "assembling and distribution rates," to be established under section 408 of the act would be made available to freight forwarders and common carriers by motor vehicle and that with such rates available it would not be necessary for freight forwarders and common carriers by motor vehicle to operate under joint rates for a period extending beyond the 18 months' period provided under section 409.

Very few assembling and distribution rates have been established under section 409. The primary reason that the provisions relating to assembling and distribution rates have not worked out as had been contemplated is because of conditions arising as a result of the war. Traffic has been heavy for all types of carriers, problems of equipment and manpower have demanded the attention of the carriers, and operating and other costs have been high. There has, therefore, been little incentive for motor carriers to establish assembling and distribution rates. Furthermore, the task of establishing such rates presents formidable technical and mechanical difficulties, requiring experienced and competent personnel at a time when the trained personnel of the carriers has been fully occupied with other problems. It seems unlikely that such conditions will materially improve during the war period.

If section 409 were permitted to lapse on November 16, 1943, the motor carriers handling forwarder traffic would be required, in the absence of assembling and distribution rates, to assess full local rates in the gathering and distribution of forwarder freight. Estimates place the amount of such traffic which receives a motor haul at one or both ends of the consolidated rail movement at from 50 to 60 percent of the total forwarder traffic. The freight forwarders brought forth much testimony in the hearings which were held before this committee on forwarder legislation leading to the enactment of part IV, to the effect that they cannot afford to pay the full local rates of the motor carriers and continue their business on the scale and to the degree that it is now conducted. The smaller towns and communities would be the first to suffer a loss of forwarder service, but inevitably the cutting off of the off-line tonnage would cause a slowing down of other service movements and generally impair the efficiency and scope of the business of freight forwarders.

If the tonnage were not handled in forwarder service it would be diverted to other channels of transportation, which are already overloaded. The Director of the Office of Defense Transportation advises that in his opinion the discontinuation of joint rates on November 16, 1943, would cause an immediate shift of a substantial amount of merchandise traffic from the motor carriers to the railroads, and that the present capacities of the railroads and the motor carriers for various kinds of cargo are such, relatively speaking, that any decrease in the proportion of merchandise traffic now being handled by the motor carriers would be unfortunate.

INTERSTATE COMMERCE COMMISSION,
Washington, October 25, 1943.

Hon. BURTON K. WHEELER,
Chairman, Committee on Interstate Commerce,
United States Senate, Washington, D. C.

MY DEAR CHAIRMAN WHEELER: Your letter of October 13, 1943, addressed to the Chairman of the Commission and requesting a report and comments on S. 1425, introduced by yourself, "to amend section 409 of the Interstate Commerce Act, relating to joint rates of freight forwarders and common carriers by motor vehicle," has been referred to our legislative committee. After careful consideration by that committee, I am authorized to submit the following comments in its behalf:

The amendment permits the establishment of joint rates by freight forwarders from any origin to any destination on any commodity or class of traffic where any freight forwarder jointly with a common carrier by motor vehicle has in effect any such rate. This would permit the establishment of joint rates from any origin to any destination where any individual freight forwarder rate or a joint rate is in effect. Section 2 would amend paragraph (4) of the proviso so as to permit the establishment of additional forwarder-motor rates from and to points which now have such rates on corresponding traffic.

The period during which section 409 may continue in effect is extended to 42 months from the date of enactment of part IV instead of 18 months; that is, the period is extended for 2 more years. The Commission's authority to fix a date prior to such expiration date for the termination of the joint rates remains unchanged. Under section 1 of S. 1425, the 18-month period would be extended 2 years or until November 16, 1945. Some of the Commissioners are of the view that there should be no further extension of this date. The majority of the Commission agree that under present circumstances, a possible extension of 2 years, or 42 months, from the effective date of the act, appears to be expedient.

The principal reason why few, if any, such rates have been established is that joint forwarder-motor rates are confined to forwarders subject to the act, but section 408 contains provisions also with respect to "others who employ services of motor carriers under like conditions." Accordingly, many motor carriers (and probably forwarders as well) may have been unwilling to shift from joint forwarder-motor rates to assembling and distribution rates under section 408 or to establish assembling and distribution rates because they know that mail-order companies and other large shippers will demand that whatever rates are made available to forwarders also will be extended to them. We anticipate continued reluctance on the part of motor carriers and forwarders to use section 408 unless and until it is made clear that special assembling and distribution rates are to be confined to true forwarders and not extended to consolidators, pool-car operators, mail-order houses, and the like.

Respectfully submitted.

WALTER M. W. SPLAWN,
Chairman, Legislative Committee.
CHARLES D. MAHAFFIE.
JOHN L. ROGERS.

OFFICE FOR EMERGENCY MANAGEMENT,
OFFICE OF DEFENSE TRANSPORTATION,
Washington, D. C., October 23, 1943.

Re S. 1425.

Hon. BURTON K. WHEELER,
Chairman, Committee on Interstate Commerce,
United States Senate, Washington, D. C.

DEAR CHAIRMAN WHEELER: This will respond to your letter of October 13, 1943, inviting my comments on the above-entitled bill which you introduced in the Senate on October 12, 1943.

I am considerably interested in the first paragraph of this bill which proposes to substitute the words "forty-two months" for the words "eighteen months" in section 409 of the Interstate Commerce Act. As I understand it, the statutory authorization for joint rates of motor carriers and freight forwarders under the "eighteen months" provision in section 409 expires on November 16, 1943. The substitution of language proposed by S. 1425 would preserve and continue such authorization for a further period of 24 months.

I am convinced, after careful study of the matter, that abrupt discontinuation of joint rates of freight forwarders and motor carriers on November 16, 1943, would cause an immediate shift of a substantial amount of merchandise traffic from the motor carriers to the railroads. The present capacities of the railroads and the motor carriers for various kinds of cargo are such, relatively speaking, that any decrease in the proportion of merchandise traffic now being handled by the motor carriers would be unfortunate. Under the circumstances, I feel that congressional action to postpone the presently specified date of expiration of authorization for joint freight forwarder-motor carrier rates is clearly desirable.

S. 1425 proposes that the period of postponement shall be 24 months. I have no way of judging whether such period would be sufficient or insufficient for the purposes of my office. There is no prospect of a change in the immediate future in the transportation conditions to which I have referred above, and it is probable that the factors which make postponement immediately advisable will continue for the duration of hostilities. While it is clear that continuation of existing authority for these joint rates for at least 12 months will contribute to maximum efficiency in the utilization of the Nation's transportation equipment, I cannot now predict whether traffic considerations at the end of 12 months will be such as to require a further extension.

The provisions of section 2 of S. 1425, which regulate the establishment of new joint rates, appear to change existing law somewhat. I do not believe that rate adjustments resulting therefrom will have any appreciable impact upon the traffic conditions with which my office is primarily concerned, however. For this reason I confine myself to the comment that the provisions in question do not appear to be objectionable.

Under all of the circumstances I am of the view that legislation designed to continue present authority for joint rates of motor carriers and freight forwarders should be enacted before November 16, 1943; that such authority should be

continued for not less than 12 months; that the provisions of S. 1425 appear adequate to accomplish the desired result; and that none of the provisions in the bill is objectionable with reference to the purposes of my office.

Very sincerely yours,

JOSEPH B. EASTMAN, *Director.*

WAR DEPARTMENT,
Washington, October 25, 1943.

Hon. CLARENCE F. LEA,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. LEA: At your request, the War Department has considered H. R. 3366, to amend section 409 of the Interstate Commerce Act, relating to joint rates of freight forwarders and common carriers by motor vehicle.

This proposed bill provides for a 2-year extension of the time within which freight forwarders and motor common carriers may operate under joint rates and charges pending establishment of assembling and distribution rates. This bill also would appear to broaden the limitations on establishment of new or additional joint rates now prescribed by section 409 (a) (4) by making possible the establishment of new joint rates under conditions therein described.

The War Department interposes no objection now to such an extension for a reasonable period of time.

It is appropriate to state, however, that it is desired that this report be received without prejudice to the position heretofore taken by the War Department with reference to section 408 of the act that assembling and/or distribution rates be available to freight forwarders and others who employ or utilize the instrumentalities or services of common carriers under like conditions.

The War Department is unable to estimate the fiscal effect of the enactment of this measure.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

MINORITY VIEWS

[To accompany committee report on S. 1425]

The majority makes its favorable report on the passage of this bill solely upon the grounds of expediency. There is much to be said for that point of view. However, important principles affecting sound legislation are entitled to expression here. They are quite aside from the question of expediency, which alone controlled the majority expression.

The basic law considered here was embodied in S. 210, which passed the Senate on March 24, 1941; went to the House; was perfected in conference and signed on May 16, 1942. This bill was the first attempt to regulate what are known as "freight forwarders."

Proper handling of merchandise freight, which is the principal business of freight forwarders, is a matter that has had long attention. Handling by the railroads, under their customary methods of handling less-carload freight, was correctly described by Interstate Commerce Commissioner Joseph B. Eastman in this language:

> A central and most important fact is that the carriage of less-than-carload freight has for many years been a troublesome, unsatisfactory, and unprofitable part of the railroad business (229 I. C. C. 307).

The freight-forwarder method now in effect, and actually in effect without regulation for many years previous to the passage of S. 210, is much more efficient, expeditious, and satisfactory.

The development of various methods of handling this character of traffic, and the abuses that grew up in connection therewith, was fully described in I. C. C. Docket No. 27365. The first report was made October 11, 1938 (229 I. C. C. 201). A supplemental report was made by the Interstate Commerce Commission on April 10, 1939 (232 I. C. C. 175). To anyone interested, these reports will furnish all the information necessary for a complete understanding.

A HISTORY OF THE RATES

A recent "proposed report," by Examiner Haden of the Interstate Commerce Commission, contains a concise summary of the history of the rates in effect. From that report I quote:

> Prior to the approval of part II (motor carrier) of the Interstate Commerce Act, forwarders had generally made contracts with motor carriers under which the rates charged on forwarder traffic were tantamount to joint rates. The tariff provisions of that part of the act became effective April 1, 1936. Many, if not most, of the larger forwarders filed tariffs with the Commission, containing joint rates with motor carriers, effective April 1, 1936, which were supplemented from time to time thereafter. In *Acme Fast Freight, Inc., Common Carrier Application* (8 M. C. C. 211), decided July 12, 1938, the Commission found that forwarders are not common carriers nor contract carriers under part II of the act, and that they may not lawfully participate in joint rates with common carriers by motor vehicles. To meet this situation, certain motor carriers operating between Chicago and points in Wisconsin and between certain other points in Indiana and Illinois filed tariffs with the Commission containing rates designated as "proportional rates." These tariffs were suspended and later found

unlawful by Division 5, in *Chicago and Wisconsin Points Proportional Rates* (10 M. C. C. 556). This decision was affirmed by the Commission in 17 M. C. C. 573, and the latter decision was sustained by the Supreme Court in the *United States* v. *Chicago Heights Trucking Company* (310 U. S. 344), generally referred to as the *Chicago Heights case.* In a supplemental report in the *Acme case* (17 M. C. C. 549), the Commission ordered joint tariffs of Acme Fast Freight, Inc., and certain other forwarders canceled. This action was sustained in *Acme Fast Freight* v. *United States* (30 F. Supp. 968) and affirmed by the Supreme Court in 309 U. S. 638 on April 8, 1940. In *Freight Forwarding Investigation* (229 I. C. C. 201, 304), decided October 11, 1938, the Commission found that the forwarder in its relations to the rail lines is a shipper, but that in its relations to the public it has characteristics of a common-carrier transportation agency, and that its regulation as such is not contemplated within the provisions of either part I or part II of the act.

As a result of this litigation, the Commission entered orders striking from its files the tariffs of forwarders which has been filed with it, including the so-called joint rates with motor carriers. By successive postponements of the effective dates of such orders, the Commission withheld requiring compliance with such decisions awaiting the action of the Congress on regulatory legislation for the forwarding industry.

PRACTICES UNLAWFUL

The most important factor of the present situation is that as far back as January 1, 1936, these "joint rates" have been unlawful; the Interstate Commerce Commission found them to be unlawful in 1938; the Supreme Court affirmed the finding of the Interstate Commerce Commission on April 8, 1940; Senate action in the form of Senate Resolution 146 was taken on July 6, 1939. S. 210 was passed by the Senate on March 24, 1941. It became law on May 16, 1942. It has been more than 5 years since the first finding of "unlawfulness" of these rates. It has been more than 3 years since the Supreme Court sustained the Interstate Commerce Commission in this finding. These unlawful rates have been in effect for more than 7 years and more than 5 years since they were found to be unlawful. A reasonable regard for even moderately effective government would require that an unlawful situation be cured within this more than ample period of time.

The bill, as it passed the Congress, substituted a system of "assembling and distributing" rates for the division of the unlawful rate theretofore received by the motor carrier, whether common or contract carrier. In order to permit necessary time for adjustment to the new method, a period of 18 months was allowed. There was considerable discussion as to the amount of time necessary to accomplish this purpose. Personally, I was of the opinion that 6 months would be sufficient. Over my objection, the conferees reported a period of 18 months, which was embodied in the law.

That time will expire November 16, 1943. Freight forwarders are now before the Congress asking a further extension of this period. The committee held hearings on November 1 and 2. The testimony on this point varied greatly. The bulk of the testimony from experienced traffic men was that a 3 months' extension would be sufficient. There was much testimony from various shipper organizations, including, as usual, the National Industrial Traffic League, supporting the freight forwarders request for 2 years, which was shortened to 18 months in the House. The Senate committee in favorably reporting this bill changed the language to conform to the House adjustment.

AN EXTRAORDINARY SITUATION

On all sides, except possibly the freight forwarders themselves, the testimony was universal that the freight forwarders had made little or no effective effort to change their rate policies to conform to the statute. The reason is that the forwarders are dissatisfied with the law as written and want it changed. This is their method of securing such a change. In commenting upon this phase of the matter, the Interstate Commerce Commission said:

> We anticipate continued reluctance on the part of motor carriers and forwarders to use section 408 unless and until it is made clear that special assembling and distribution rates are to be confined to *true forwarders* and *not extended to consolidators, pool-car operators,* mail-order houses, and the like. [Emphasis mine.]

Many shippers, organizations and representatives, including the Chicago Association of Commerce, objected to any extension of the time "adjustment period." They point out with much vigor that no matter what additional period is granted, whether it be 3 months or 2 years, the freight forwarders will return to the Congress without having taken any effective action to meet the requirements of the statute as it now stands.

In this view I concur and so stated to the committee in the record.

It is contended by various shipper organizations and representatives that the extension of the period recommended by the majority will continue discrimination and prejudice to a large and important group of shippers which now is alleged to exist. There is substantial support for that view.

The proper place for the freight forwarders to test the application of the present statute is before the Interstate Commerce Commission. They have such a proceeding now under way in I. and S. Docket No. M–2180. The examiner hearing the case has recommended that the complaint be dismissed on the ground that the objections made by the freight forwarders are untenable. Final decision by the Interstate Commerce Commission has not, of course, been rendered as yet.

UNSOUND LEGISLATIVE POLICY

The practical effect of the recommendation of the majority of the committee is to continue any existing discrimination and prejudice for a further period of 18 months. I do not think that this is sound legislative policy. If the freight forwarders are not satisfied with the present statute, they should ask the Congress in a straightforward way to amend it, and state their reasons therefor.

If the freight forwarders had made an earnest effort to conform to the present statute, and had failed because of a lack of time, the situation would be different. They have made no such effort and in all human probability they will not make such an effort. As we approach May 16, 1945, the Congress will probably be confronted with the present situation unless the statute is changed to meet the views of the freight forwarders. They have no intention of undertaking to comply with the present statute.

I am not unmindful of the fact that the Interstate Commerce Commission made a qualified recommendation for an extension of the period in which to implement this statute.

Conflict between the second and third paragraphs of the recommendation of the Commission, dated October 25, would justify criticism of

the sound judgment of the Commission in this matter. The reluctance of persons coming within its jurisdiction to comply with the plain intent of Congress is hardly sufficient basis for the Commission to recommend extension of a situation which it knows to be unsatisfactory. Certainly the Commission itself should be foremost in bringing to a close the long extended period during which "unlawful rates" have been in effect. It is quite difficult to understand why any administrative body, charged with high responsibility, should recommend the continuance of such conditions.

Section 2, paragraph 4, of S. 1425 deals with a peculiar circumstance. It is a trifle difficult to explain but I will attempt to make it clear as tersely as possible.

The "unlawful tariffs" ordered to be stricken from the records of the Interstate Commerce Commission were filed entirely, or almost entirely, by the larger freight-forwarding companies doing a great preponderance of the business. Section 409 of S. 210, as passed, permitted such of these "unlawful tariffs" as were on file on the date of passage of the act to remain on file and to be applicable for a period of 18 months. Thus, a freight-forwarding company which had filed "unlawful tariffs" could continue to operate under those tariffs for that period. The freight forwarders who had not filed "unlawful tariffs" but had been waiting to see what sort of lawful tariffs could be filed, were required to operate under section 405. Operation under this section was more circumscribed and restricted than the wide open validity given to the "unlawful tariffs" of the larger forwarders. This was clearly a distinction that was not justified. This distinction would disappear whenever the provisions of section 409 of S. 210 become effective.

Paragraph 4 of section 2 of S. 1425 removes the distinction by permitting the smaller carriers to file tariffs and indulge in practices that are "unlawful" to the same extent that the tariffs of the larger forwarders have been and are "unlawful." It is true that with the permission of the Congress these practices were legalized for 18 months and this legalization is continued for another 18 months.

PERMIT SECTION REPEALED

Under the provisions of section 410 of S. 210 all freight forwarders are required to obtain a "permit" from the Interstate Commerce Commission. "Grandfather" rights are extended where forwarders have been in actual operation pending determination of their application. Applications for permits must state in a general way the territory, or territories, in which permission to operate is desired. The applications from the large companies necessarily covered the large territory in which each of them had been operating. Presumably, applications for permits by the smaller companies showed the actual situation as to the territory in which they operated.

Paragraph 4 of section 2 of S. 1425 throws the whole permit requirement into the discard. Regardless of the limits of the territory in which any freight-forwarding company has heretofore operated, and presumably to which its application to operate was confined, any freight forwarding company may, if S. 1425 becomes law, operate anywhere and everywhere that any other freight forwarding company, large or small, has operated and for which it has published rates.

This will create a most extraordinary situation. Attempt was made in S. 210 to give the Interstate Commerce Commission some degree of control over the territory in which freight forwarders would be permitted to operate. Obviously, such control is highly desirable, in fact, almost essential if the waste of uneconomic competition is to be reduced or avoided. This provision in S. 1425 throws the whole matter wide open. Any freight forwarding company having a permit to operate in any territory in the United States, no matter how severely limited, will then be authorized, without regard to the Interstate Commerce Commission, to extend its operations anywhere and everywhere. This is one of the most extraordinary provisions of a proposed statute with which I am familiar.

For the reasons mentioned herein, I could not join the majority in the view that expediency necessitated such a wide departure from sound legislative practices. The report of the majority permits the law already enacted to continue to be flouted by those for whose regulation and control it was enacted.

Equally obvious, it is an astounding step to remove all restrictions heretofore imposed in favor of a wide open and unrestricted operation of freight forwarder service. The distinction between freight-forwarding companies carried in S. 210, as originally passed, and which became law, was not fair or reasonable. However, in overcoming that defect, the majority has fallen into a much greater error.

For these reasons, which were urged upon the majority and which were not controverted on any hand, I could not join the majority in its expression.

CLYDE M. REED.

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